

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EDITH ROBINSON,

Plaintiff,

vs.

THE HARTFORD LIFE AND ACCIDENT  
INSURANCE COMPANY, a Connecticut  
corporation; THINGS REMEMBERED,  
INC. LONG-TERM DISABILITY PLAN,  
substituted for Things Remembered, Inc.,  
  
Defendant.

CASE NO. CV-10-0033-JST (RCx)

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AFTER  
COURT TRIAL**

1 **I. INTRODUCTION**

2 This is an action pursuant to the federal Employee Retirement Income Security Act  
3 of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* In this action, plaintiff Edythe B. Robinson  
4 (“Robinson”) seeks to recover benefits she contends were wrongfully denied by defendant  
5 The Hartford Life and Accident Insurance Company (“Hartford”), acting as claims  
6 administrator for defendant Things Remembered, Inc. Long-Term Disability Plan. The  
7 parties submitted the Administrative Record, briefs, and proposed findings of fact and  
8 conclusions of law. Robinson also submitted supplemental documents that were not part  
9 of the Administrative Record, and the parties briefed the issue of whether and to what  
10 extent the Court should consider these supplemental documents. The parties agreed to  
11 submit the case to the Court for findings of fact and conclusions of law on the basis of the  
12 pleadings, papers, and Administrative Record.

13 The following constitutes the Court’s findings of fact and conclusions of law  
14 required by Federal Rule of Civil Procedure 52. To the extent that any findings of fact are  
15 included in the Conclusions of Law section, they shall be deemed findings of fact, and to  
16 the extent that any conclusions of law are included in the Findings of Fact section, they  
17 shall be deemed conclusions of law.

18  
19 **II. FINDINGS OF FACT**

20 1. Robinson was employed by Things Remembered, Inc. (“Things Remembered”) as  
21 an assistant retail store manager beginning June 18, 1996. (Administrative Record (“AR”)  
22 1006.)

23 2. While employed, Robinson participated in the group long term disability income  
24 insurance plan (“Plan”), policy no. GLT-34443 (“Policy”), offered by Hartford to  
25 employees of Things Remembered. (AR 1143.)

26 3. On July 4, 1997, Robinson ceased working for Things Remembered. On the same  
27 date, Robinson was placed off work by her physicians and subsequently filed a claim for  
28 Long-Term Disability (“LTD”) Benefits under the Plan and Policy. (AR 1006-10.)

1       4. In or about November 1997, Robinson submitted an LTD claim to Hartford,  
2 premised on shoulder pain and neck pain. (AR 1006-10.) She submitted an Attending  
3 Physician's Statement, dated October 14, 1997, from Dr. Alonzo J. Flores, her family  
4 practitioner, who diagnosed shoulder and neck pain, with symptoms first appearing on  
5 April 22, 1997. (AR 1009-10.) He found a Class 5 (severe) limitation of functional  
6 capacity. (AR 1010.) He concluded that Robinson was totally disabled, but would recover  
7 sufficiently to perform the duties of her position by December 8, 1997. (*Id.*)

8       5. Hartford obtained medical records from Dr. Flores, as well as Drs. Robert del Junco  
9 and Robert R. Beltran, both of whom were otolaryngologists (ENTs) who treated Robinson  
10 for a lesion of her left tonsil in 1997. (AR 926.)

11       6. Hartford approved Robinson's claim for benefits, effective October 2, 1997. (AR  
12 882.)

13       7. Despite Dr. Flores' belief that Robinson would recover sufficiently to perform the  
14 duties of her position, Robinson never returned to work.

15       8. On February 2, 1999, the Social Security Administration issued a Fully Favorable  
16 Decision, finding that Robinson was under a disability, and had been under a disability,  
17 since July 30, 1998 (later amended to July 30, 1997). (AR 722-28.) Robinson's  
18 impairments included:

19  
20               [S]pinal degeneration with advanced degenerative disc disease at  
21               the weight bearing L4/L5 level, status post lumbar surgery and  
22               history of disc disease with disc space infection, progressive  
23               cervical disc degeneration with disc protrusion, thecal sac  
24               impingement, marked narrowing of the left neural foramen, some  
25               compression of the cervical spinal cord and degenerative changes  
26               at C4/C5, C5/C6 and C6/C7, and status post bilateral carpal  
27               tunnel surgeries . . . .  
28

1 (AR 728.) The Decision stated that Robinson met the insured status requirements  
2 regarding disability, that Robinson's impairments were "severe" under the Social Security  
3 Act, and that Robinson was precluded from performing any type of work on a regular and  
4 continuing basis. (*Id.*) Therefore, Robinson was entitled to disability insurance benefits.  
5 (*Id.*)

6 9. On October 2, 1999, Robinson reached the "any occupation" period of the Policy.  
7 (AR 135, 1146.) At that point in time, to qualify as "Totally Disabled," Robinson had to  
8 be "prevented from performing the essential duties of any position for which [she was]  
9 qualified by education, training, or experience." (AR 1146.) Hartford continued to pay  
10 Robinson LTD Benefits after October 2, 1999, under the "any occupation" standard for  
11 "Totally Disabled." (AR 709.)

12 10. On November 7, 2001, Hartford arranged for an Independent Medical Examination  
13 ("IME") to be performed by Dr. David Drew Neer in order to assess Robinson's disability  
14 for Vocational Rehabilitation. Dr. Neer found that Robinson suffered from cervical  
15 spondylosis with significant spinal canal stenosis throughout. He stated that Robinson  
16 remained unable to perform on the job and that she was disabled. (AR 253-55.)

17 11. On November 13, 2001, Dr. Neer made a written addendum to the IME. He  
18 informed Hartford that he had reviewed all of Robinson's records and took them into  
19 account in forming his opinion as to her capability to work. He concluded, "[Robinson] is  
20 currently at maximum medical improvement and I foresee her restrictions to be of a  
21 permanent nature . . . ." (AR 252.) Moreover, he stated that "due to her left cervical  
22 radiculopathy and cervical spondylosis, I do not feel [Robinson] is capable of performing  
23 any type of work. I would opine that this would be on a permanent basis, as I do not  
24 foresee any improvement in her condition." (*Id.*)

25 12. On September 29, 2004, Hartford received a report prepared by Dr. Steven  
26 Brouman of the California Hand Surgery & Orthopedic Specialists Clinic, Inc. (AR 275-  
27 78.) He stated that Robinson suffered from "Bilateral cubital tunnel syndrome." (AR 276.)  
28 In his report he analyzed "Factors of Disability" and stated, "There is tenderness along

1 both wrists and diminished light touch in both hands. The estimated bilateral grip loss is  
2 75%.” (AR 277.) Dr. Brouman continued, “In terms of the patient’s bilateral hands and  
3 elbows, there is an estimated 75% loss of pre-injury capacity for lifting, gripping, grasping,  
4 pushing, pulling, squeezing, twisting, torquing, fingering and fine manipulative tasks.”  
5 (*Id.*)

6 13. On March 7, 2005, Hartford wrote to Dr. Stephen V. Jochen, Robinson’s treating  
7 chiropractor, inquiring as to her status and her ability to perform a sedentary and light  
8 occupation. (AR 411.)

9 14. On June 17, 2005, Dr. Jochen responded to Hartford stating, “Due to [Robinson’s]  
10 severe degenerative condition in her low back and neck, patient is unable to walk greater  
11 than 30 minutes without pain and can’t drive more than 20 minutes without pain. Based on  
12 our findings, it is the opinion of this office that Edythe Robinson is permanently disabled  
13 from working any sedentary or light occupational tasks.” (AR 412.)

14 15. On October 8, 2005, pursuant to Hartford’s request, Robinson underwent another  
15 IME, which was performed by Dr. Paul Leonard. (AR 1034-42.)

16 16. In Dr. Leonard’s IME report, he stated that he received and reviewed approximately  
17 twenty-two (22) individual reports, tests, opinions and studies on Robinson, “covering  
18 multiple musculoskeletal and other system conditions.” (AR 397-98.)

19 17. In addition to record review, Dr. Leonard also examined Robinson; however, his  
20 examination was limited to Robinson’s spine. (AR 402.)

21 18. Based on his examination, Dr. Leonard concluded that Robinson was not disabled  
22 and was “capable of significant employment.” (AR 402-03.)

23 19. Hartford sent the second IME report to Robinson’s treating physicians and  
24 requested their concurrence with Dr. Leonard’s opinion. (AR 341.) The report was sent to  
25 four (4) doctors: Dr. Moddaber (AR 422), Dr. Horacek (AR 425), Dr. Jochen (AR 392),  
26 and Dr. Lum (AR 421). The letter sent to each doctor contained the following paragraph:  
27  
28

1 Based on this report and the medical documentation contained in  
2 her file it is our determination that Ms. Robinson currently has  
3 full-time sedentary or light work capacity. If you agree with this  
4 assessment please sign and date below. If your opinion is  
5 different than the conclusion of this report, please provide  
6 specific objective evidence in support of your conclusion.  
7

8 (AR 340, 394, 422, 425.)

9 20. Drs. Moddaber and Horacek did not respond. (AR 341.)

10 21. Dr. Lum's office also advised that he would not be responding. (AR 341.)

11 22. On November 18, 2005, Dr. Jochen signed and returned the letter expressing his  
12 agreement with the IME assessment. (AR 392.)

13 23. In a letter dated January 5, 2006, Hartford advised Robinson that she was no longer  
14 "Totally Disabled" and that her LTD claim had been terminated as of January 4, 2006.  
15 (AR 338.) The letter cited the relevant Policy provisions and the basis for Hartford's  
16 decision, and informed Robinson about her ERISA appeal rights, including the opportunity  
17 to submit additional documentation. (AR 338-43.) Robinson contacted Hartford to  
18 request an extension of the deadline to submit an appeal. (AR 334-35.) Hartford advised  
19 Robinson that the last day to submit an appeal was July 10, 2006, 180 days after the  
20 termination letter was sent. (AR 323.)

21 24. On May 19, 2006, Robinson saw Dr. Mark Hodgson, an orthopaedic surgeon in the  
22 Division of Hand, Upper Extremity & Microsurgery at the Medical College of Wisconsin.  
23 (AR 242-43.) His physical examination reflected that Robinson had "full range of motion  
24 of the neck . . . without pain . . . . Range of motion of the shoulders is full, as are the  
25 elbows, wrists and digits, without pain . . . ." (*Id.*) He further noted that "[t]here is no  
26 evidence of muscular atrophy, strength is 5/5 throughout." (*Id.*) And he suggested that  
27 Robinson was "to return to our clinic on as as-needed basis . . . ." (*Id.*) No work-related  
28 limitations were provided. (*Id.*)

1       25. On June 1, 2006, Robinson saw Dr. David Siverhus for an “evaluation of disability  
2 from prior right carpal tunnel syndrome and decompressions.” (AR 272.) Dr. Siverhus  
3 completed a “Health Progress Report” with a diagnosis of “bilateral upper extremity  
4 complaints” and under “Physical Limitations” stated that Robinson should not be lifting or  
5 carrying over 5 pounds. (AR 271.) The section on “Duration of Limitations” was left  
6 blank. (*Id.*)

7       26. On June 5, 2006, Robinson saw Raj Rao, M.D., an orthopedic spine surgeon. (AR  
8 240-41.) Dr. Rao’s report reflected that Robinson underwent a physical examination of,  
9 among other things, her gait, neck, and bilateral upper extremities; and she underwent a  
10 neurologic exam of her upper and lower extremities. (*Id.*) Dr. Rao also reviewed x-rays of  
11 Robinson’s cervical spine. (AR 241.) Dr. Rao’s report noted that “patient had questions  
12 as to her ability to work.” (*Id.*) Dr. Rao opined that “[f]rom a cervical spine point of view,  
13 the patient may resume work without any imposed limitations. If she had pain, reasonable  
14 limitations for her degenerative cervical spondylosis may be no lifting more than 15  
15 pounds and no repetitive neck activity.” (*Id.*)

16       27. On July 2, 2006, Robinson appealed Hartford’s decision by letter, maintaining that  
17 her claim file was incomplete and did not accurately reflect her disability. (AR 178.) She  
18 attached additional medical documentation and a chronology of her conditions and  
19 treatments over the years, which she advised reflected a true picture of her medical  
20 condition. (AR 177-89.)

21       28. Robinson’s file was referred to University Disability Consortium (“UDC”) for an  
22 independent review, and letters were sent to three of Robinson’s treating physicians, Drs.  
23 Lum, Jochen and Thomas Flatley, advising them that a physician from UDC would be  
24 contacting them and asking for their cooperation. (AR 168, 170, 172.)

25       29. A medical record review was conducted by UDC physician Robert Y. Pick. (AR  
26 145.) Dr. Pick reviewed the records in Robinson’s claim file as well as the records she  
27 submitted with her appeal. (AR 145-56.) Dr. Pick did not examine Robinson. (AR 145.)

28       30. In his September 28, 2006 report, Dr. Pick noted that when he spoke to Dr. Lum,

1 Robinson's internist, Dr. Lum said he had not seen her since January 2006. (AR 153.) Dr.  
2 Lum did not know if Robinson was working when he last saw her, but his recollection was  
3 that she was able to work. (*Id.*) Dr. Pick specifically asked Dr. Lum if Robinson could  
4 engage in sedentary work activities, and Dr. Lum replied in the affirmative. (*Id.*)

5 31. Dr. Pick also spoke to Dr. Flatley, who stated that he had not seen Robinson since  
6 June 2006, but that he believed she could work with limitations. (AR 153-54.) Dr. Flatley  
7 stated that Robinson could lift less than 15 pounds and engage in activities with no  
8 repetitive neck motions. (AR 154.) Further, he stated that he concurred with Dr. Rao's  
9 opinion that Plaintiff could work without any imposed limitations. (*Id.*)

10 32. Dr. Pick also noted several unsuccessful attempts to reach Dr. Jochen. (*Id.*)

11 33. Letters were sent to Drs. Lum and Flatley that repeated Dr. Pick's understanding of  
12 their respective conversations, and asked that they sign and return the letters if Dr. Pick's  
13 summary was correct. (AR 157-60.)

14 34. Dr. Lum signed the form, indicating that while he believed Robinson could engage  
15 in sedentary work activities, that "this should be evaluated at the present time." (AR 143.)  
16 He also added, "my last visit with Edith Robinson was 1/12/06 . . . . Additional diagnoses  
17 upon further review are cervical radiculopathy, S/P laminectomy, S/P hysterectomy, S/P  
18 lysis adhesions, OA mild. I do not recall ever having discussed disability or her suitability  
19 to work with this patient." (AR 143.)

20 35. Dr. Flatley signed the statement affirming his conversation with Dr. Pick, with no  
21 comments or additions. (AR 140-41.)

22 36. Dr. Pick opined, based on his review of the voluminous file, as well as his  
23 conversations with Drs. Lum and Flatley, that the key issues in the case were Robinson's  
24 stated subjective symptoms and complaints, with a paucity of objective substantive  
25 orthopedic/musculoskeletal findings. (AR 154.) In response to specific questions by  
26 Hartford, Dr. Pick opined that Robinson was able to engage in sedentary to light category  
27 work activities on a full-time basis. (AR 155-56.)

28 37. Based on a review of the evidence contained in the claim file, including the opinion



1 provided by Dr. Pick, the signed summaries by Dr. Lum and Dr. Flatley, and the  
2 concurrence letter from Dr. Jochen on November 18, 2005, Hartford determined that  
3 Robinson was capable of full-time work at the sedentary to light physical demand level.  
4 (AR 6-10.)

5 38. On October 6, 2006, Appeal Specialist Kim Huber wrote Robinson a detailed letter  
6 explaining why the denial of her claim was upheld on appeal. (AR 133-38.) She also  
7 provided a copy of Dr. Pick's independent record review and copies of the signed  
8 statements received from Drs. Lum and Flatley, pursuant to Robinson's request. (AR 133-  
9 38.)

10 39. Approximately one and a half years after Hartford's denial of Robinson's appeal,  
11 Robinson wrote a letter to Hartford requesting a reexamination, enclosing additional  
12 medical documentation, including a March 20, 2008 letter from Dr. Jochen which  
13 "correct(s) and clarif(ies his) position on Ms. Robinson's functional capacity." (Pl. Edythe  
14 Robinson's Supplemental Docs. in Supp. of Disability 2-5.) The letters and documentation  
15 were not before Hartford at the time it made its October 6, 2006 determination regarding  
16 Robinson's disability, and thus were not part of the Administrative Record.

17 40. The Plan contains the following language: "The Hartford has full discretion and  
18 authority to determine eligibility for benefits and to construe and interpret all terms and  
19 provisions of the Group Insurance Policy." (AR 1154.)

20 41. Hartford is acting as both the funding source and plan administrator with regard to  
21 the LTD Benefits at issue in this case. (AR 1141-57.)

### 22 23 **III. CONCLUSIONS OF LAW**

24 The beneficiary of an ERISA plan may bring a civil action against a plan  
25 administrator "to recover benefits due to him under the terms of his plan, to enforce his  
26 rights under the terms of the plan, and to clarify his rights to future benefits under the  
27 terms of the plan." 29 U.S.C. § 1132(a)(1)(B). As such, Plaintiff has standing as a Plan  
28

1 and Policy beneficiary to bring this action against the plan administrator, Hartford, to  
2 recover benefits under the Plan.

### 4 ***A. Standard of Review***

5 The scope of judicial review of an ERISA benefits decision depends on whether the  
6 plan vests discretion in the administrator in determining benefits. *Bogue v. Ampex Corp.*,  
7 976 F.2d 1319, 1324 (9th Cir. 1992). The Court reviews a denial of benefits de novo,  
8 unless “the benefit plan gives the administrator or fiduciary discretionary authority to  
9 determine eligibility for benefits or to construe the terms of the plan.” *Firestone Tire &*  
10 *Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Here, the Plan uses unambiguous  
11 language to provide discretionary authority to Hartford. Hence, the Court will review  
12 Hartford’s decision for an abuse of discretion.<sup>1</sup>

13 However, in this case, as noted above, Hartford is acting as both the funding source  
14 and plan administrator. “An insurer with a ‘dual role as the administrator and funding  
15 source for the [p]lan’ has an inherent conflict of interest.” *Nord v. Black & Decker*  
16 *Disability Plan*, 296 F.3d 823, 828 (9th Cir. 2002) (quoting *Lang v. Long-Term Disability*  
17 *Plan of Sponsor Applied Remote Tech., Inc.*, 125 F.3d 794, 797 (9th Cir. 1997)) *overruled*  
18 *on other grounds by Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003). The  
19 \_\_\_\_\_

20 <sup>1</sup> Robinson acknowledges in her Trial Brief that, in light of the Plan language, “it  
21 appears that the Court will review Hartford’s decision to deny LTD Benefits for an abuse  
22 of discretion.” (Doc. 37 at 16.) Although Robinson argues later in her Trial Brief that “the  
23 court should review the administrator’s denial of benefits *de novo*,” (Doc. 37 at p. 17) the  
24 Court notes that plaintiff inappropriately relies on the burden-shifting analysis of *Atwood*  
25 *v. Newmont Gold Co., Inc.*, 45 F.3d 1317 (9th Cir. 1995) for this proposition. *Atwood* was  
26 expressly overruled on that very point. *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d  
27 955, 966-67 (9th Cir. 2006).  
28

1 reviewing judge must take the conflict into account when determining whether the  
2 administrator abused its discretion and must “temper the abuse of discretion standard with  
3 skepticism ‘commensurate’ with the conflict.” *Nolan v. Heald Coll.*, 551 F.3d 1148, 1153  
4 (9th Cir. 2009) (quoting *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 959 (9th Cir.  
5 2006)).

6 The Supreme Court has eschewed a “one-size-fits-all procedural system” for  
7 weighing the significance of an administrator’s conflict of interest, emphasizing that  
8 benefits decisions and conflicts vary greatly from case to case, such that a conflict must be  
9 weighed as one factor among many. *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2351  
10 (2008). “[A]ny one factor will act as a tiebreaker when the other factors are closely  
11 balanced, the degree of closeness necessary depending upon the tiebreaking factor’s  
12 inherent or case-specific importance.” *Id.* The Court considers “the extent to which a  
13 conflict of interest appears to have motivated an administrator’s decision.”

14  
15 Other factors that frequently arise in the ERISA context include  
16 the quality and quantity of the medical evidence, whether the plan  
17 administrator subjected the claimant to an in-person medical  
18 evaluation or relied instead on a paper review of the claimant’s  
19 existing medical records, whether the administrator provided its  
20 independent experts “with all of the relevant evidence[,]” and  
21 whether the administrator considered a contrary SSA disability  
22 determination, if any.

23  
24 *Montour v. Hartford Life & Accident Ins. Co.*, 588 F.3d 623, 630 (9th Cir. 2009). For this  
25 reason, “[s]imply construing the terms of the underlying plan and scanning the record for  
26 medical evidence supporting the plan administrator’s decision is not enough . . . .” *Id.*

27 Under an abuse of discretion standard, courts are generally limited to review of the  
28 Administrative Record. *See, e.g., Jebian v. Hewlett-Packard Co. Emp. Benefits Org.*

1 *Income Prot. Plan*, 349 F.3d 1098, 1110 (9th Cir. 2003). Although the court may consider  
2 evidence outside the record if it is relevant to the administrator's conflict of interest, the  
3 review of the merits of the administrator's decision "must rest on the administrative record  
4 once the conflict (if any) has been established by extrinsic evidence or otherwise." *Abatie*,  
5 458 F.3d at 970. Extra-record evidence may also be admitted when procedural  
6 irregularities by the administrator "prevented the full development of the administrative  
7 record. In that way the court may, in essence, recreate what the administrative record  
8 would have been had the procedure been correct." *Id.* at 973. This rule, however, does not  
9 provide license to admit documents and medical reports that did not exist at the time of the  
10 administrative determination. *See LaMantia v. Hewlett-Packard Co. Emp. Benefits Org.*  
11 *Income Prot. Plan*, 281 Fed. Appx. 664, 666-67 (9th Cir. 2008).

### 12 13 ***B. Application of Standard of Review***

14 To show both a conflict of interest and an abuse of discretion, Robinson requests  
15 that this Court review documents outside the Administrative Record. The Court rejects  
16 that request. The documents consist of a March 31, 2008 letter from Robinson requesting  
17 "reexamination" along with attachments including various letters and report. All but three  
18 of the documents post-date the October 6, 2006, denial of benefits. The Court will not  
19 consider any of these post-dated documents as they were not in existence at the time of the  
20 administrative decision. Of the three documents that existed prior to the administrative  
21 decision, two are already part of the Administrative Record (AR 247-49), and none appear  
22 to be relevant to any conflict-of-interest analysis or to a finding of procedural irregularities,  
23 nor does Robinson argue their significance. *See Abatie*, 458 F.3d at 970, 973.

24 When limited to the Administrative Record, Robinson argues that Hartford abused  
25 its discretion in denying LTD Benefits by (1) failing adequately to consider or address the  
26 prior disability determinations by the Social Security Administration, Dr. Neer in his 2001  
27 IME,, and Robinson's treating chiropractor, and (2) focusing only on Robinson's spine,  
28 despite the fact that she had a number of conditions contributing to her disability.

1 The Court agrees with Robinson that Dr. Leonard's IME failed adequately to  
2 address the Social Security Administration's 1999 disability finding. His report simply  
3 noted that Robinson "br[ought] in a copy of a Social Security Administration decision or  
4 (sic) 23rd, 1999. Social Security benefits were awarded." (AR 398.) His report did not  
5 explicitly reflect whether he considered the Social Security Administration's  
6 determination, nor did it explain why he came to a contrary conclusion. This omission  
7 may indicate a lack of "a principled and deliberative reasoning process." *Montour*, 588  
8 F.3d at 635 (quoting *Glenn v. MetLife*, 461 F.3d 660, 674 (6th Cir. 2006)). On the other  
9 hand, the Court does not agree that Dr. Leonard failed to consider or address the  
10 determinations by Drs. Neer and Jochen. Dr. Leonard's report reflected that he discounted  
11 Dr. Neer's 2001 report because it relied on MRIs that were several years old, and  
12 moreover, because Dr. Leonard reviewed the MRIS and disagreed with Dr. Neer's  
13 findings. Similarly, Dr. Leonard indicated that he reviewed a May 27, 2005, MRI report,  
14 which purportedly formed the basis of Dr. Jochen's opinion, and found the MRI to be  
15 "totally benign."

16 As for the scope of Dr. Leonard's exam, while he made reference to prior medical  
17 records relating to Robinson's other conditions, he did not appear to sufficiently address  
18 conditions other than those relating to Robinson's spine. Indeed, he stated "(b)ased on  
19 today's examination, *limited to the spine*, she has no more disability than she had while  
20 working full time and being without substantial symptoms." (AR 402) (emphasis added).  
21 He further stated "[t]he spine will not limit her employment, except to require occasional  
22 changes of position, and limitation to no heavy work, no lifting or carrying over 20  
23 pounds." *Id.* (emphasis added). Hence, neither his examination nor his conclusion  
24 addressed possible disabling conditions other than the spine.

25 Although the shortcomings in Dr. Leonard's report are factors to be considered in  
26 determining whether Hartford abused its discretion, the Court must consider the  
27 Administrative Record as a whole. When the entire Administrative Record is considered,  
28 including not only the additional opinion of Dr. Pick after a medical records review, but

1 also the opinions of Robinson's treating physicians Drs. Jochen, Rao, Lum, and Flatley,  
2 the Court concludes that Hartford did not abuse its discretion in denying Robinson LTD  
3 Benefits. The opinions of those treating physicians were more current than either the 1999  
4 Social Security Administration determination or the 2001 IME, and there is nothing in the  
5 record to indicate that Dr. Pick's analysis was restricted to Robinson's spine. It appears  
6 that Dr. Pick reviewed relevant medical records pertaining to the whole array of conditions  
7 for which Robinson had sought treatment. While Robinson argues that Dr. Pick's record  
8 review failed to account for Dr. Siverhus' 5 lb. lifting limitation, the Court notes that Dr.  
9 Siverhus' report appears to be based on stale data, and that he recommended further testing  
10 regarding Robinson's bilateral upper extremities. Instead, Dr. Pick appears to have relied  
11 upon the more extensive evaluations of Drs. Rao, Flatley and Hodgson, which included  
12 examination of Robinson's upper extremities and did not indicate any work-related  
13 limitations in that regard. Finally, the Court concludes that Hartford was entitled to rely on  
14 Dr. Jochen's letter expressing agreement with the assessment that Robinson could perform  
15 full-time sedentary work.

### 16 17 *C. Conclusion*

18 Although the Court reviews Hartford's LTD Benefits determination under an abuse  
19 of discretion standard, because there is a structural conflict of interest, the Court considers  
20 that conflict as a factor in determining whether Hartford abused its discretion. Here, the  
21 Court gave some weight to that factor because the doctor who conducted the IME failed to  
22 address properly the contrary Social Security Administration disability determination and  
23 appeared to limit his examination and conclusion to only one of Robinson's potentially  
24 disabling conditions. The Court, however, finds that Hartford reasonably relied on  
25 opinions of Robinson's own treating physicians, which Robinson obtained during the  
26 administrative appeal process, in determining that Robinson did not qualify as totally  
27 disabled. Therefore, on balance, the Court finds that Hartford did not abuse its discretion  
28 in denying benefits.

1 For the foregoing reasons, the Court finds in favor of Defendants. Defendants are  
2 ordered to prepare and submit a judgment consistent with this order.

3  
4 DATED: November 22, 2010

**JOSEPHINE STATON TUCKER**

5 UNITED STATES DISTRICT JUDGE  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28